

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1647

Introduced by Assembly Member Gordon

February 13, 2012

An act to amend Sections ~~42825, 42835~~, 42843, ~~42844~~, 42845, 42847.5, 42851, 42852, 42853, 42854, and 42960 of, to add Section 42961.1 to, and to repeal and add Section 42961 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1647, as amended, Gordon. Solid waste: waste tires: enforcement. Existing law requires, upon the order of the Department of Resources Recycling and Recovery, a person who stores, stockpiles, or accumulates waste tires in violation of the provisions regulating the storage, stockpiling, or accumulation of waste tires to clean up those waste tires and abate the effects of the waste tires or take other necessary remedial actions in the case of threatened pollution or nuisance. Existing law requires the Attorney General, at the request of the department, to petition the appropriate superior court for the issuance of an injunction if the person fails to comply with the cleanup or abatement order. Existing law authorizes, at the request of the department, the district attorney or county counsel of the county in which the violation occurred to petition the court for the issuance of an injunction if the Attorney General fails to petition the court within 45 days of the department's request to the Attorney General.

This bill would shorten that time period to 30 days.

Existing law authorizes the department, subject in some cases to a formal administrative adjudicative hearing, to revoke, suspend, or deny a waste tire facility permit if the department makes specified findings.

This bill would, instead, authorize the department to revoke, suspend, or deny a waste tire facility permit *for up to 3 years if, after holding a hearing pursuant to specified informal hearing procedures, the department makes specified findings serves a statement of issues, and if the applicant or permitholder takes specified actions.* The bill would require the department to, ~~pursuant to these procedures,~~ notify the applicant for, or the holder of, the permit of a violation, ~~serve a statement of issues on the applicant for, or the holder of, the permit~~ and, upon receipt of a notice of defense, schedule a hearing before the Director of Resources Recycling and Recovery. *The bill would require the hearing to be conducted pursuant to a specified informal hearing procedure, but would authorize the department to conduct the hearing pursuant to, or convert the hearing to be conducted pursuant to, the formal administrative adjudicative hearing procedures.*

Existing law authorizes the department to issue and serve an administrative complaint to a person on whom civil liability is imposed for a violation of law regulating waste tire facilities. Existing law requires the department to inform the person served that a formal administrative hearing ~~would~~ *will* be held within 60 days of service unless the person waives his or her right to a hearing.

This bill would, instead, require the department to serve an administrative accusation on the person. The bill would require the department to schedule an ~~informal~~ administrative hearing before the director within 15 days of receipt of a notice of defense to the administrative accusation. The bill would require the director to issue, within 60 days of the submission of the case, an order setting the amount of civil penalty to be imposed, if any.

Existing law authorizes the department to revoke, suspend, or deny a waste and used tire hauler registration if the department makes specified findings. Existing law authorizes an applicant for the registration to request a hearing if the application ~~was~~ *is* denied.

This bill would ~~additionally~~ *instead authorize the department to take those actions if the applicant for, or holder of, the registration takes specified actions.* The bill would authorize a holder of the registration to request a hearing upon the revocation or suspension of the registration. The bill would require the department to notify the applicant for, or the

holder of, the registration of the revocation, suspension, or denial and the effective date of the revocation, suspension, or denial and serve an accusation on a statement of issues to the applicant for, or the holder of, the registration. The bill would require the department to conduct an informal hearing before the director. The bill would provide that the revocation or suspension remain in effect until the hearing is completed and the department has made a final determination on the merits. The bill would provide that the revocation or suspension is of no further effect if the department fails to transmit the determination within 60 days of the submission of the case. *The bill would require hearings regarding the registration of tire haulers to be conducted pursuant to a specified informal hearing procedure, but would authorize the department to conduct the hearing pursuant to, or convert the hearing to be conducted pursuant to, the formal administrative adjudicative hearing procedures.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 42825 of the Public Resources Code is~~
2 ~~amended to read:~~
3 ~~42825. (a) A person who accepts waste tires at a major waste~~
4 ~~tire facility that has not been issued a permit or an authorization~~
5 ~~to operate from the department, or who knowingly directs,~~
6 ~~transports, or abandons waste tires to or at a major waste tire~~
7 ~~facility that has not been issued a permit or an authorization to~~
8 ~~operate from the department shall be punished by a fine of not less~~
9 ~~than one thousand dollars (\$1,000) or more than ten thousand~~
10 ~~dollars (\$10,000) for each day of violation, by imprisonment in~~
11 ~~the county jail for not more than one year, or by both that fine and~~
12 ~~imprisonment.~~
13 ~~(b) For purposes of subdivision (a), "each day of violation"~~
14 ~~means each day on which a violation continues. In any case in~~
15 ~~which a person has accepted waste tires at a major waste tire~~
16 ~~facility, or knowingly directed or transported waste tires to a major~~
17 ~~waste tire facility, that has not been issued a permit, in violation~~
18 ~~of subdivision (a), each day that the waste tires remain at the~~
19 ~~facility and the person has knowledge thereof is a separate~~
20 ~~additional violation, unless the person has filed a report with the~~

1 department disclosing the violation and is in compliance with any
2 order regarding the waste tires issued by the department.

3 ~~SEC. 2. Section 42835 of the Public Resources Code is~~
4 ~~amended to read:~~

5 ~~42835. (a) A person who accepts waste tires at a minor waste~~
6 ~~tire facility that has not been issued a permit or an authorization~~
7 ~~to operate from the department, or who knowingly directs,~~
8 ~~transports, or abandons waste tires to or at a minor waste tire~~
9 ~~facility that has not been issued a permit or an authorization to~~
10 ~~operate from the department shall be punished by a fine of not less~~
11 ~~than five hundred dollars (\$500) or more than five thousand dollars~~
12 ~~(\$5,000) for each day of violation, by imprisonment in the county~~
13 ~~jail for not more than one year, or by both that fine and~~
14 ~~imprisonment.~~

15 ~~(b) For purposes of subdivision (a), “each day of violation”~~
16 ~~means each day on which a violation continues. In any case in~~
17 ~~which a person has accepted waste tires at a minor waste tire~~
18 ~~facility, or knowingly directed or transported waste tires to a minor~~
19 ~~waste tire facility, that has not been issued a permit, in violation~~
20 ~~of subdivision (a), each day that the waste tires remain at the~~
21 ~~facility and the person has knowledge thereof is a separate~~
22 ~~additional violation, unless the person has filed a report with the~~
23 ~~department disclosing the violation and is in compliance with any~~
24 ~~order regarding the waste tires issued by the department.~~

25 ~~SEC. 3.~~

26 ~~SECTION 1. Section 42843 of the Public Resources Code is~~
27 ~~amended to read:~~

28 ~~42843. (a) The department, after holding a hearing in~~
29 ~~accordance with the procedures set forth in this chapter, may~~
30 ~~revoke, suspend, or deny a waste tire facility permit for a period~~
31 ~~of up to three years, by serving a statement of issues, by personal~~
32 ~~service or certified mail, in accordance with Section 42852, if the~~
33 ~~department determines applicant for, or holder of, the permit, does~~
34 ~~any of the following:~~

35 ~~(1) The permit was obtained by a material misrepresentation or~~
36 ~~failure to disclose relevant factual information applicant~~
37 ~~misrepresented or failed to disclose material factual information~~
38 ~~in its application.~~

39 ~~(2) The operator of the waste tire facility, at any time during~~
40 ~~the previous three years, has been issued a final order for, failed~~

1 ~~to comply with, or has been convicted of, fails to comply with an~~
2 ~~order regarding compliance subsequent to receiving a notice of~~
3 ~~violation, for any of the following:~~

4 (A) ~~One or more violations—A violation~~ of this chapter or the
5 regulations adopted pursuant to this chapter.

6 (B) ~~One or more violations—A violation~~ of Chapter 19
7 (commencing with Section 42950) or the regulations adopted
8 pursuant to that chapter.

9 (C) The terms or conditions of the operator's waste tire facility
10 permit.

11 ~~(D) Any order, direction, or penalty issued by the department~~
12 ~~relating to the safe storage or processing of waste tires.~~

13 (b) If the department determines that a violation specified in
14 paragraph (2) of subdivision (a) demonstrates a chronic, recurring
15 pattern of noncompliance that poses, or may pose, a significant
16 risk to public health and safety or the environment, or if the
17 violation has not been corrected or reasonable progress toward
18 correction has not been achieved, the department may suspend,
19 revoke, or deny a waste tire facility permit, in accordance with the
20 procedure specified in subdivision (a), for a period of not more
21 than five years.

22 (c) If the department determines that a violation specified in
23 paragraph (2) of subdivision (a) has resulted in significant harm
24 to human health or the environment, the department may suspend,
25 revoke, or deny a waste tire facility permit, in accordance with the
26 procedure specified in subdivision (a), for a period of five years
27 or longer.

28 (d) The department shall notify the applicant for, or the holder
29 of, the permit ~~of a violation as described in paragraph (1) or (2)~~
30 ~~of subdivision (a) and, at the same time, shall serve, by personal~~
31 ~~service or certified mail, the person with a statement of issues the~~
32 ~~revocation, suspension, or denial of the permit and the effective~~
33 ~~date of the revocation, suspension, or denial. A revocation or~~
34 ~~suspension issued pursuant to this section shall remain in effect~~
35 ~~until the hearing is completed and the director issues a decision.~~

36 (e) Upon receipt by the department of a notice of defense to the
37 statement of issues from the applicant for, or the holder of, the
38 permit, the department shall, within 15 days, schedule a hearing
39 before the director. The hearing shall be held within ~~60~~ 90 days

1 of the scheduling date, *unless a later date is agreed to by both the*
2 *department and the applicant for, or the holder of, the permit.*

3 (f) After conducting the hearing, the director shall, within 60
4 days after the case is submitted, issue a decision, including an
5 order setting forth the issuance, suspension, revocation, or denial
6 of the permit. *If the decision is not issued within this period, the*
7 *revocation or suspension shall be of no further effect.*

8 *SEC. 2. Section 42844 of the Public Resources Code is*
9 *amended to read:*

10 42844. (a) ~~The board department may temporarily immediately~~
11 ~~suspend any permit issued pursuant to this chapter prior to any~~
12 ~~hearing if the board department determines that the action is~~
13 ~~necessary to prevent or mitigate an imminent or substantial~~
14 ~~endangerment to the public health or safety or the environment.~~

15 (b) ~~The board department~~ shall notify the holder of the permit
16 of the temporary suspension and the effective date thereof and, at
17 the same time, shall serve the person with an accusation.

18 (c) Upon receipt by ~~the board department~~ of a notice of defense
19 to the accusation from the holder of the permit, ~~the board~~
20 ~~department~~ shall, within 15 days, set the matter for a hearing,
21 which shall be held as soon as possible, but not later than 30 days
22 after receipt of the notice.

23 (d) ~~The temporary~~ suspension shall remain in effect until the
24 hearing is completed and ~~the board department~~ has made a final
25 determination on the merits, which shall be made within 60 days
26 after the completion of the hearing. If the determination is not
27 transmitted within this period, ~~the temporary~~ suspension shall be
28 of no further effect.

29 ~~SEC. 4.~~

30 *SEC. 3. Section 42845 of the Public Resources Code is*
31 *amended to read:*

32 42845. (a) A person who stores, stockpiles, or accumulates
33 waste tires at a location for which a waste tire facility permit is
34 required pursuant to this chapter, or in violation of the terms and
35 conditions of the permit, the provisions of this chapter, or the
36 regulations adopted under this chapter, shall, upon order of the
37 department, clean up those waste tires or abate the effects of the
38 waste tires, or, in the case of threatened pollution or nuisance, take
39 other necessary remedial action.

1 (b) (1) Upon failure of a person to comply with the cleanup or
2 abatement order, the Attorney General, at the request of the
3 department, shall petition the superior court for that county for the
4 issuance of an injunction requiring the person to comply with that
5 order. In a suit, the court shall have jurisdiction to grant a
6 prohibitory or mandatory injunction, either preliminary or
7 permanent, as the facts may warrant.

8 (2) If the Attorney General declines, or is unable, to petition the
9 appropriate superior court for issuance of an injunction within 30
10 days from the department's request, pursuant to paragraph (1), the
11 district attorney or county counsel of that county may, at the
12 department's request, petition the superior court for issuance of
13 the injunction specified in paragraph (1).

14 ~~SEC. 5.~~

15 *SEC. 4.* Section 42847.5 of the Public Resources Code is
16 amended to read:

17 42847.5. (a) Any costs or damages incurred by the department
18 under this article constitute a lien upon the real property owned
19 by any responsible party that is subject to the remedial action. The
20 lien shall attach regardless of whether the responsible party is
21 insolvent. A lien imposed under this section shall arise at the time
22 costs are first incurred by the department with respect to a remedial
23 action at the site.

24 (b) A lien established under this section shall be subject to the
25 notice and hearing procedures required by due process of the law.
26 Prior to imposing the lien, the department shall send the property
27 owner via certified mail a "Notice of Intent to Place A Lien" letter.
28 This letter shall provide that the owner, within 14 calendar days
29 from the date of receipt of the letter, may object to the imposition
30 of the lien either in writing or through an informal proceeding
31 before a neutral official. This neutral official shall be the director
32 or his or her designee, who may not have had any prior
33 involvement with the site. The issue before the neutral official
34 shall be whether the department has a reasonable basis for its
35 determination that the statutory elements for lien placement under
36 this section are satisfied. During this proceeding the property owner
37 may present information or submit documents, or both, to establish
38 that the department should not place a lien as proposed. The neutral
39 official shall ensure that a record of the proceeding is made, and
40 shall issue a written decision. The decision shall state whether the

1 property owner has established any issue of fact or law to alter the
2 department's intention to file a lien, and the basis for the decision.

3 (c) The department may not be considered a responsible party
4 for a remediated site merely because a lien is imposed under this
5 section.

6 (d) A lien imposed under this section shall continue until the
7 liability for the costs or damages incurred under this article, or a
8 judgment against the responsible party, is satisfied. However, if it
9 is determined by a court that the judgment against the responsible
10 party will not be satisfied, the department may exercise its rights
11 under the lien.

12 (e) A lien imposed under this section shall have the force and
13 effect of, and the priority of, a judgment lien upon its recordation
14 in the county in which the property subject to the lien is located.
15 The lien shall contain a legal description of the real property that
16 is subject to, or affected by, the remedial action, the assessor's
17 parcel number, and the name of the owner of record, as shown on
18 the latest equalized assessment roll.

19 (f) All funds recovered under this section on behalf of the
20 department's waste tire stabilization and abatement program shall
21 be deposited in the California Tire Recycling Management Fund
22 established under Section 42885.

23 ~~SEC. 6.~~

24 *SEC. 5.* Section 42851 of the Public Resources Code is
25 amended to read:

26 42851. (a) The department may serve an administrative
27 accusation to a person on whom civil liability may be imposed
28 pursuant to this chapter. The accusation shall allege the acts or
29 failures to act that constitute a basis for liability and the amount
30 of the proposed civil liability. The accusation shall be served by
31 personal service or certified mail and shall inform the party—~~so~~
32 ~~served that a hearing shall be conducted within 60 days after the~~
33 ~~party has been served of the right to a hearing.~~

34 (b) Upon receipt by the department of a notice of defense to the
35 accusation, the department shall, within 15 days, schedule a hearing
36 before the director. The hearing shall be held within 60 days of
37 the scheduling date, unless the party waives the right to a hearing.

38 (c) If the party waives the right to a hearing, the department
39 shall issue an order setting liability in the amount proposed in the
40 accusation unless the department and the party have entered into

1 a settlement agreement, in which case the department shall issue
2 an order setting liability in the amount specified in the settlement
3 agreement. If the party has waived the right to a hearing or if the
4 department and the party have entered into a settlement agreement,
5 the order shall not be subject to review by any court or agency.

6 (d) After conducting the hearing, the director shall, within 60
7 days after the case is submitted, issue a decision, including an
8 order setting the amount of civil penalty to be imposed, if any.

9 ~~SEC. 7.~~

10 *SEC. 6.* Section 42852 of the Public Resources Code is
11 amended to read:

12 42852. A hearing required under this chapter shall be conducted
13 by the director in accordance with the informal hearing
14 requirements specified in Chapter 4.5 (commencing with Section
15 11400) of Part 1 of Division 3 of Title 2 of the Government Code
16 ~~and shall not be required to be conducted in accordance with the~~
17 ~~formal hearing requirements specified in Chapter 5 (commencing~~
18 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
19 ~~Government Code. In making a determination, but the department~~
20 *may initially file a hearing pursuant to, or a convert a hearing to*
21 *be conducted pursuant to, the formal hearing requirements*
22 *specified in Chapter 5 (commencing with Section 11500) of Part*
23 *1 of Division 3 of Title 2 of the Government Code. In making a*
24 *decision regarding a denial, revocation, suspension, or penalty,*
25 the director shall take into consideration the nature, circumstances,
26 extent, and gravity of the violation, the violator's past and present
27 efforts to prevent, abate, or clean up conditions posing a threat to
28 the public health or safety or the environment, the violator's ability
29 to pay the proposed civil penalty, and the prophylactic effect that
30 imposition of the proposed penalty will have on both the violator
31 and on the regulated community as a whole.

32 ~~SEC. 8.~~

33 *SEC. 7.* Section 42853 of the Public Resources Code is
34 amended to read:

35 42853. Orders setting civil liability issued under this section
36 shall become effective and final upon issuance thereof, and
37 payment shall be made within 30 days of issuance, unless otherwise
38 ordered by the director. Copies of these orders shall be served by
39 personal service or by certified mail upon the party served with

1 the accusation and upon other persons who appeared at the hearing
2 and requested a copy.

3 ~~SEC. 9.~~

4 *SEC. 8.* Section 42854 of the Public Resources Code is
5 amended to read:

6 42854. (a) Within 30 days after service of a copy of a decision
7 issued by the director, a person so served may file with the superior
8 court a petition for writ of mandate for review of the decision. Any
9 person who fails to file the petition within the 30-day period may
10 not challenge the reasonableness or validity of a decision or order
11 of the director in a judicial proceeding brought to enforce the
12 decision or order or for other remedies.

13 (b) Except as otherwise provided in this section, Section 1094.5
14 of the Code of Civil Procedure governs any proceedings conducted
15 pursuant to this subdivision. In all proceedings pursuant to this
16 subdivision, the court shall uphold the decision of the director if
17 the decision is based upon substantial evidence in the whole record.

18 (c) The filing of a petition for writ of mandate does not stay any
19 corrective action required pursuant to this chapter or the accrual
20 of any penalties assessed pursuant to this chapter.

21 (d) This section does not prohibit the court from granting any
22 appropriate relief within its jurisdiction.

23 ~~SEC. 10.~~

24 *SEC. 9.* Section 42960 of the Public Resources Code is
25 amended to read:

26 42960. (a) The department may suspend, revoke, or deny a
27 waste and used tire hauler registration for a period of up to three
28 years, by serving a statement of issue in accordance with Section
29 42961, if the applicant for, or holder of, the registration does any
30 of the following:

31 (1) Commits more than three violations of, or fails to comply
32 with any requirements of, this chapter or Chapter 16 (commencing
33 with Section 42800), or the regulations adopted pursuant to those
34 provisions, within a one-year period.

35 (2) Commits, aids, or abets any violation of this chapter or
36 Chapter 16 (commencing with Section 42800), or the regulations
37 adopted pursuant to those provisions, or permits an agent to do so,
38 and the department determines that the violation poses an
39 immediate threat of harm to public safety or to the environment.

1 (3) Commits, aids, or abets a failure to comply with this chapter
2 or Chapter 16 (commencing with Section 42800), or the regulations
3 adopted pursuant to those provisions, or permits an agent to do so,
4 and the department determines that the failure to comply shows a
5 repeating or recurring occurrence or that the failure to comply may
6 pose a threat to public health or safety or the environment.

7 (4) ~~Commits any misrepresentation or omission of a significant~~
8 ~~fact or other required information in the application for a waste~~
9 ~~and used tire hauler registration or commits any misrepresentation~~
10 ~~or omission of fact~~ *Misrepresents or fails to disclose material*
11 *factual information, or other required information in the*
12 *application for a waste and used tire hauler registration, or*
13 *misrepresents or omits factual information* on any manifest more
14 than three times in one year.

15 (b) The department may suspend, revoke, or deny a waste and
16 used tire hauler registration for a period of three years to five years,
17 or may suspend, revoke, or deny a waste and used tire hauler
18 registration permanently, in accordance with the procedures
19 specified in subdivision (a), under any of the following
20 circumstances:

21 (1) The hauler's registration has been previously revoked or
22 denied for any violation specified in subdivision (a).

23 (2) The hauler has been previously fined pursuant to this chapter
24 or Chapter 16 (commencing with Section 42800).

25 (3) The department determines that the hauler's operations pose
26 a significant threat to public health and safety.

27 ~~SEC. 11.~~

28 *SEC. 10.* Section 42961 of the Public Resources Code is
29 repealed.

30 ~~SEC. 12.~~

31 *SEC. 11.* Section 42961 is added to the Public Resources Code,
32 to read:

33 42961. (a) The department shall notify the applicant for, or
34 holder of, the registration of the revocation, suspension, or denial
35 of the ~~registrations~~ *registration* and the effective date of the
36 suspension and revocation and, at the same time, shall serve the
37 person with a statement of issues.

38 (b) Upon a request for a hearing by the department from the
39 applicant for, or the holder of, the registration, the department
40 shall, within 15 days, schedule a hearing before the director. The

1 hearing shall be held within ~~60~~ 90 days after that scheduling date,
2 *unless a later date is agreed to by both the department and the*
3 *applicant for, or the holder of, the registration.*

4 (c) A revocation or suspension issued pursuant to Section 42960
5 shall remain in effect until the hearing is completed and the
6 department's director has issued a decision.

7 (d) After conducting the hearing, the director shall, within 60
8 days after the case is submitted, issue a decision, including an
9 order setting for the issuance, suspension, revocation, or denial of
10 the permit. If the decision is not transmitted within this period, the
11 revocation or suspension shall be of no further effect.

12 ~~SEC. 13.~~

13 *SEC. 12.* Section 42961.1 is added to the Public Resources
14 Code, to read:

15 42961.1. A hearing required under this chapter shall be
16 conducted by the director in accordance with the informal hearing
17 requirements specified in Chapter 4.5 (commencing with Section
18 11400) of Part 1 of Division 3 of Title 2 of the Government Code,
19 ~~and shall not be required to be conducted in accordance with the~~
20 ~~formal hearing requirement~~ *but the department may initially file*
21 *a hearing pursuant to, or convert a hearing to be conducted*
22 *pursuant to, the formal hearing requirements* specified in Chapter
23 5 (commencing with Section 11500) of Part 1 of Division 3 of
24 Title 2 of the Government Code.